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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7731 OF 2007

Prajakta Vijay Varsolkar .. Petitioner

V/s

State of Maharshtra & Ors. .. Respondents

Mr.Y.S. Jahagirdar, Senior Advocate with Mr.R.K. Mendadkar and Mrs.Helen Koli-Mandlik for the petitioner.

Mr.R.D. Rane, Government Pleader, for respondents nos.1 to 3 and 5.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 18TH OCTOBER 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. Heard.

2. By this petition, the petitioner challenges the order dated 18th September 2007 passed by the respondent no.2 - Scrutiny Committee invalidating the petitioner's caste claim of belonging to "Malhar Koli" tribe.

3. By a Presidential Order dated 6th September 1950, Mahadev Koli was declared as a scheduled tribe. Malhar Koli was not a scheduled tribe under the Presidential Order. We are however informed that Malhar

Koli has been declared to be a scheduled tribe under the Tribes modification order of 1956 with effect from 1st November 1956. We proceed on that assumption.

4. The petitioner initially obtained a tribe certificate as belonging to Mahadev Koli tribe. That caste certificate was subjected to scrutiny before the Caste Scrutiny Committee. By an order dated 10th June 1998, the Scrutiny Committee invalidated the petitioner's claim of belonging to Mahadev Koli tribe which decision was challenged by the petitioner by filing Writ Petition No.6752 of 1998 in this Court. At the stage of admission of the writ petition, the petitioner claimed that even if the petitioner was not Mahadev Koli, she belonged to the tribe "Malhar Koli". In view of the fact that by that time "Malhar Koli" tribe was also declared as a scheduled tribe, the Court admitted the petition for final hearing. However, by its judgment and order dated 8th March 2006, a Division Bench of this Court dismissed the writ petition. In the last paragraph of the judgment, the Court however observed:-

> "The petition is, therefore, dismissed. Rule is discharged with no order as to costs. We clarify that dismissal of this petition will not come in her way to claim any other caste other

than Mahadev Koli."

Taking a clue from the liberty granted by the Court that dismissal of the writ petition would not prevent the petitioner from claiming any other caste, the petitioner claimed that she belongs to Malhar Koli tribe and obtained a caste certificate to that effect from the Sub-Divisional Officer. The caste certificate was put to scrutiny at the hands of the Caste Scrutiny Committee. By an order dated 18th September 2007, the Scrutiny Committee rejected the claim of the petitioner as belonging to Malhar Koli tribe holding that the petitioner belongs to "Koli" caste and not "Malhar Koli" tribe. That judgment is impugned in this petition.

5. Mr.Jahagirdar, learned counsel for the petitioner, submitted that the petitioner belongs to Malhar Koli tribe. The mere fact that she had previously claimed that she belongs to "Mahadev Koli" tribe cannot invalidate her claim of belonging to Malhar Koli tribe. He further submitted that this Court has granted liberty to the petitioner for claiming any other social status and, therefore, the petitioner was entitled to claim that she belongs to "Malhar Koli" tribe. Mr.Jahagirdar also invited our attention to a copy of the school register produced at page 90 of the petition wherein the caste of the petitioner’s father is

recorded as "Hindu Malhar Koli" on the date of his admission which was 26th June 1957. He submitted that the petitioner's caste cannot be different than the caste of her father. As the caste of the petitioner's father has been recorded as Hindu Malhar Koli in the school register dated 26th June 1957, the Scrutiny Committee erred in holding that the petitioner does not belong to Malhar Koli tribe. Mr.Jahagirdar also invited our attention to the entry dated 29th April 1954 in birth register in respect of Sharad Janardan Maya Varsolkar, uncle of the petitioner, wherein his caste is recorded as Malhar Koli in support of his case.

6. As against this, Mr.Rane, learned Government Pleader, invited our attention to the genealogy annexed at page 89 of the petition. From the said genealogy, it is clear that the petitioner claims should be lineal descendant of Maya Goya Varsolkar (Patil). Mr.Rane then invited our attention to the entries in the births and deaths register. The entry dated 7th July 1954 shows that Laxman Maya Varsolkar died at Village Revdanda and his caste was recorded as "Koli" in the register of births and deaths. Another entry therein of the year 1938 shows that Posai Maya Varsolkar died of enteric fever in the year 1938 and her caste was shown as "Koli". Another entry dated 3rd August 1952 shows that Sudha d/o Laxman Maya Varsolkar died at Village Revdanda

and her caste is shown as "Koli". He also invited our attention to entry dated 5th September 1956 of the death of Baliram s/o Rambhau Narayan Varsolkar, who is stated to be a distant cousin of the petitioner’s father. His caste is also recorded as "Koli" in the births and death register.

7. It may be noted that "Malhar Koli" was not declared as a scheduled tribe till November 1956 and almost all the entries prior thereto 1956 show the caste of the petitioner’s uncles and other near relatives as "Koli". It is only after "Malhar Koli" was included in the list of scheduled tribes with effect from November 1956 that in the year 1957 an entry was amended on 26th June 1957 in the school register showing the caste of petitioner’s father as "Malhar Koli". It may be that that entry was not relied upon by the petitioner in the previous writ petition when she claimed to belong to "Mahadev Koli" tribe. In any event, the entry which has been made in respect of the petitioner’s father after the Presidential Order and amendment thereof would have less importance than the entries which are of earlier period. It is true that the entry regarding Sharad Janardan Maya Varsolkar, uncle of the petitioner, shows his caste as Malhar Koli, but the preponderance of entries regarding other relatives of the petitioner show their caste as "Koli" simpliciter. Thus, the

preponderance of evidence shows that the petitioner's paternal relatives belong to "Koli" caste.

8. In the light of what is stated above, we find that the view taken by the Scrutiny Committee that the petitioner does not belong to Malhar Koli is not only a possible view but preponderantly a probable view. If two views are possible and the view taken by the Scrutiny Committee is a possible view, it is not possible to interfere in the said finding of fact in exercise of our writ jurisdiction. In this regard, we respectfully quote the observations made in paragraph 14 of the decision of the Apex Court in **Kumari Madhuri Patil v. Additional Commissioner, Tribal Development, reported in AIR 1995 SC 94**:

> "14. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a Court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts

> and record a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding."

9. For the reasons stated above, the writ petition is rejected summarily.

10. Mr.Jahagirdar prays that the interim protection may be granted by this Court. Though we are not inclined to grant interim protection, in view of the fact that the petitioner is taking education in a postgraduate degree, we protect her admission for a period of two weeks.

(D.G. KARNIK, J.) (S.B. MHASE, J.)